

EXHIBIT B

Misty Blanchette Porter, MD - July 18, 2019

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

Case No. 5:17-cv-194

MISTY BLANCHETTE PORTER, M.D.,

Plaintiff

vs.

DARTMOUTH-HITCHCOCK MEDICAL CENTER,
DARTMOUTH-HITCHCOCK CLINIC,
MARY HITCHCOCK MEMORIAL HOSPITAL,
and DARTMOUTH-HITCHCOCK HEALTH,

Defendants.

VOLUME II

DEPOSITION OF MISTY BLANCHETTE PORTER, M.D.,
taken on behalf of the Defendant at Lebanon,
New Hampshire, on July 18, 2019, at 10:00 a.m.,
before Cynthia Foster, RPR, LCR No. 14, a
Licensed Court Reporter within and for the
State of New Hampshire.

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APPEARANCES:

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Norwich, Vermont, 05055, on behalf of the
Plaintiff, Misty Blanchette Porter, M.D.

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Boston, Massachusetts, 02199-7610, on behalf of
the Defendants, Dartmouth-Hitchcock Medical
Center, Dartmouth-Hitchcock Clinic, Mary
Hitchcock Memorial Hospital, and
Dartmouth-Hitchcock Health.

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S T I P U L A T I O N

It is agreed by and between the attorneys of record for the respective parties hereto as follows:

1. That the testimony of the deponent may be taken and treated as if taken pursuant to notice and order to take depositions and that all formalities of notice and order are waived by the parties, and the signatures to the stipulation are in like manner waived;

2. That all objections except as to matters of form are reserved until the deposition or any part thereof is offered in evidence;

3. That exhibits may be retained by counsel until time of trial.

4. That the deposition may be signed by the deponent before any notary public.

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1 MISTY BLANCHETTE PORTER, M.D., DULY SWORN

2 DIRECT EXAMINATION CONTINUED

3 BY MR. SCHROEDER:

4 Q Good morning, Dr. Porter.

5 A Good morning.

6 Q So as you know I represent the Defendants in
7 this case, and we're continuing your deposition
8 today regarding the allegations that you have
9 put forth in your Amended Complaint in this
10 litigation.

11 Before we started, your counsel stated that
12 you wanted to perhaps clarify or expand upon
13 something related to your calendar so I'm going
14 to give you that opportunity right now to do
15 that.

16 A When you were asking me to go through my
17 calendar --

18 Q Yes.

19 A -- I think I skipped over the times that I was
20 teaching especially at national meetings and so
21 that's part of our mission and goal and so
22 you're asking specific hours.

23 I also was working on a project with

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1 Heather Gunnell to facilitate ultrasound being
2 done within the clinic with what was a research
3 machine and so I had some hours that were
4 related to that project.

5 Q Okay. Why don't we do this. Because I think
6 it's Exhibit 8, and this is I believe the
7 calendar that you produced in this case, and
8 probably helpful to you to point out, why don't
9 we do, does it make sense so there's two things
10 that you identified, national teaching; is that
11 correct?

12 A Yes.

13 Q What did that involve?

14 A I was a moderator and a lecturer at a national
15 meeting for the American Institute of Ultrasound
16 in Medicine for a few sessions. So I was in
17 that conference.

18 Q When was that?

19 A Let me look it up.

20 Q Sure. Take your time.

21 A March 2016 I traveled to the meeting at, on the
22 16th of March.

23 Q Okay.

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1 A I also had some responsibilities for the GYN
2 Community of Practice in that period of time
3 and --

4 Q Was that related to this?

5 A Was, yes, it's American Institute of Ultrasound
6 in Medicine, and I was there until the 21st of
7 March.

8 Q Was that a conference?

9 A Yes.

10 Q And was it in any way connected to any
11 certifications that you need to maintain your
12 licenses or certifications that you currently
13 have?

14 A Yes.

15 Q Okay. Do you do that on a routine basis or on
16 an annual basis?

17 A Yes.

18 Q Okay. And were you speaking at this event?

19 A Yes.

20 Q And that March 16th looks like a Wednesday.

21 A Right.

22 Q And how many days was the conference?

23 A The 16th was a travel day. The 17th, 18th,

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1 19th, 20th, and 21st.

2 Q Those were conference days?

3 A Yes.

4 Q And you said you spoke at this event as well?

5 A Yes.

6 Q How many times did you speak at it?

7 A I have to look back at my CV, but I had, I
8 believe, three or four talks at that meeting.

9 Q Okay. In prior years, had you done the same
10 amount of activity during those kinds of
11 conferences?

12 A Within a range, yes.

13 Q And what did your attendance at this conference
14 and speaking engagements go towards in terms of
15 your certification or licenses?

16 A We're required by the American Institute of
17 Ultrasound in Medicine to have 30 credits over
18 three years, CME. Speaking is in addition to
19 that responsibility as a professional
20 obligation.

21 Q Are physicians typically compensated for their
22 attendance at these CME events?

23 A I have a reduction in registration, but we have

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1 to pay for everything else.

2 Q My question was, are you paid by the hospital
3 system or are physicians paid by the hospital
4 system for their actual attendance time at these
5 events?

6 A We're granted CME time. Part of the mission is
7 education for the organization, and there is "X"
8 number of dollars given that we can apply for
9 remuneration that we pay so as part of our CME.
10 Professional development.

11 Q With respect to, is that everything with respect
12 to the topic of the national teaching institute
13 that you said you attended?

14 A I'm going to go forward. So I went to, the copy
15 is not very clear here at the top.

16 Q What's the date or the month?

17 A I believe it's February.

18 Q 2017?

19 A I believe so.

20 Q Okay.

21 A I was invited to speak at an international
22 meeting, and I went to the International Tumor
23 Analysis Group.

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1 Q Where was that?

2 A Brussels. Well, Leuven, Belgium.

3 Q How many days was that?

4 A I traveled on the 4th, and it looks like I
5 returned on the 12th.

6 Q Did you include vacation during that time?

7 A In part. There may have been. It's not marked
8 here.

9 Q How many days was the conference?

10 A Three, and then two travel days, and then
11 weekend days.

12 Q Okay. With respect to that Heather Gunnell
13 project that you were referencing, where on your
14 calendar is that referenced in terms of hours
15 you committed to it?

16 A I'm not sure that it is registered in here.

17 Q Okay. So what made you think about that between
18 the first day of your deposition and the second
19 day today?

20 A Just I had a little more time to think about
21 what I was doing.

22 Q Okay. How many hours did you attribute to that
23 project with Heather Gunnell during the time

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1 period -- well, first of all, what was the time
2 period that you were working on this project
3 with Heather Gunnell?

4 A It was in the winter/spring before, the year
5 before the program closed.

6 Q So winter 2016 into the spring of 2017?

7 A No. It would have been probably
8 January/February into May of 2017.

9 Q Okay. And during that time period, for the
10 first half of the 2017, how much time did you
11 devote to the Heather Gunnell project?

12 A Roughly 2 to 4 hours a week.

13 Q Is that every week during the time period
14 January 2017 to May 2017?

15 A Every week to every other.

16 Q Is there a reason why you, despite the fact that
17 you recorded all of your other time on your
18 calendar, why you did not record this time?

19 A That was, it wasn't standard for us to do
20 academic projects in a clinic session, and then
21 it was when the IT person was available.

22 Q Were you compensated by the hospital system for
23 this work?

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1 A It was a project that I was asked to do.

2 Q Who asked you to do it?

3 A Leslie and Heather.

4 Q Well, okay. I understand that they asked you to
5 do it. Were you compensated for this work?

6 A As part of my, the request for my job. Yes.

7 Q Well, at the time, though, you were on long-term
8 disability, and if you didn't track your hours
9 how would that be calculated in terms of your
10 compensation?

11 A I was tracking my hours that I worked.
12 Occasionally, it went over the period of time,
13 and I would go home a bit later, but I tried to
14 truncate that, that interaction. It was --

15 Q Well --

16 A -- a short aside.

17 Q Right. I'm just wondering how you could be
18 compensated if there was no recording of your
19 hours anywhere on this project?

20 A Compensated for this project?

21 Q Yes.

22 A Specifically? It was intermittent. It was in
23 the process of performing my job duties. I

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1 tracked my hours. I wrote down largely the
2 clinical responsibilities, and I had the
3 academic responsibilities. I didn't track my
4 hours for the time that I spent preparing for
5 talks. It's part of the job responsibility. I
6 didn't track my hours that I gave talks. I
7 didn't track my hours for writing a book chapter
8 that I wrote for a national organization. So I
9 think that to me it was part of the mix of,
10 we're paid for 40 hours.

11 Here's the confusion. We're paid for 40
12 hours. Physicians work 60, 80, 100 hours. So
13 unlike attorneys where you bill every minute,
14 that's part of our organizational
15 responsibility. And so I was tracking hours and
16 I submitted my hours to DH. And that's where, I
17 think that's where the confusion comes is that
18 we work many more hours than what is on our pay
19 stub.

20 Q I understand that. But during this entire time
21 period that you're talking about, unlike every
22 other physician that you're talking about, you
23 were actually on long-term disability?

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1 A Right.

2 Q Which is completely different from every other
3 physician who is working 40, 60, 80 hours. So
4 one of the things you said is it would be
5 reflected in a reduction in your long-term
6 disability benefits if you were working during
7 that time, correct?

8 A Right.

9 Q So you had to give your insurance companies
10 evidence of whether or not you were working
11 during that time because it would reflect a
12 reduction in your compensation.

13 A Right.

14 Q Right?

15 A Correct.

16 Q And what I'm hearing you say, and correct me if
17 I'm wrong, and I know you will, is you didn't
18 track the academic time for purposes of any kind
19 of reporting procedure to the insurance
20 companies that were tracking your long-term
21 disability benefits.

22 A No.

23 Q Did you between the first day of your deposition

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1 and the second day of your deposition today

2 review your transcript at all?

3 A Yes.

4 Q Did you review the whole thing?

5 A Yes.

6 Q Was it accurate?

7 A Reasonably.

8 Q Well, you say reasonably, I want to know whether

9 or not it was accurate.

10 A There's some misspellings of people's names.

11 Q Other than misspellings, any other items that
12 you recall from reviewing your transcript that
13 were either inaccurate or incomplete?

14 A No.

15 Q Did you speak to anyone about the substance of
16 your testimony during the first day of your
17 deposition?

18 A My attorneys.

19 Q Other than your attorneys, did you speak to
20 anyone else?

21 A My husband.

22 Q Anyone else?

23 A No.

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1 Q Are you taking any medication today that would
2 affect the ability for you to testify
3 truthfully?

4 A No.

5 Q I want to ask you about current employees and
6 then former employees. What if any current
7 employees have you contacted for purposes of
8 being potential witness in your case? You
9 personally?

10 A Michelle Russell, Joan Barthold, for current
11 employees.

12 Q And when did you first reach out to Michelle
13 Russell?

14 A Within the last four to six weeks.

15 Q Okay. And what do you believe she would be able
16 to offer with respect to the allegations
17 contained in your Complaint as a witness?

18 A She was present and spoke at the meeting that Ed
19 Merrens participated in with the department
20 following the closure of the division. So she
21 would have observations about what happened in
22 the content of that meeting.

23 Q You were at that meeting as well, correct?

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1 A No.

2 Q You weren't at that meeting?

3 A No.

4 Q This is the meeting after the closure?

5 A Um-hum.

6 Q Okay. And what do you believe she would be able
7 to say with respect to that particular meeting?

8 A She was clear with me that she was very vocal
9 about my contributions to the department, to
10 patient care, to her colleagues, to the
11 well-being of women within New England and was
12 very angry that Dr. Merrens would make this
13 decision.

14 Q Anything else?

15 A She also relayed to me that he stated that my
16 illness was apparent to the organization and
17 defended his position by saying I was only
18 working 20 percent. I was only working
19 part-time.

20 Q When you say defended his position, his position
21 regarding what?

22 A Firing me.

23 Q Firing you specifically?

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1 A Yes.

2 Q Did somebody ask a question during that meeting
3 to your knowledge about the basis for your
4 termination as opposed to any of the other
5 physicians in the REI Division?

6 A Yes. Michelle did.

7 Q Okay. And you believe she said that Dr. Merrens
8 said that your illness was apparent to the
9 organization and that you were only working 20
10 percent at that point, part-time.

11 A I'm paraphrasing what she told me, yes.

12 Q Okay. Anything else about Michelle Russell and
13 her potential testimony on your behalf that
14 relates to the allegations in your Complaint?

15 A Not that immediately comes to mind.

16 Q And what about Joan Barthold? What do you
17 believe she would offer in terms of any
18 testimony regarding the allegations in your
19 Complaint?

20 A She spoke out at the same meeting with a similar
21 amount of content with regards to my
22 collegiality, my importance to the department,
23 my importance to education, my importance to the

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1 care and keeping of women at DH and supported
2 Michelle in her statements.

3 Q Do you know when that meeting occurred?

4 A The summer of 2017.

5 Q And you consider Michelle Russell a friend of
6 yours?

7 A Yes.

8 Q Do you consider Joan Barthold a friend of yours?

9 A Yes.

10 Q When did you first contact her?

11 A Again, same, four to six weeks.

12 Q Is there a reason why you reached out to both of
13 these individuals in that time period?

14 A It was the request of my attorneys.

15 Q I don't want to get into any communications you
16 had with your attorney, but anything else that
17 Joan Barthold would offer in terms of testimony
18 and support of your allegations in your
19 Complaint?

20 A That's what I was asking her directly about, and
21 otherwise, it's a broad question so could you
22 clarify specifically what you mean?

23 Q Well, you reached out to Joan Barthold for a

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1 reason, right?

2 A Right.

3 Q And you said that she would be able to offer
4 testimony regarding this meeting in the summer
5 of 2017 with Dr. Ed Merrens, and my question is
6 are there any other topics that you believe she
7 would be able to testify on regarding any of the
8 allegations in your Complaint beyond that one
9 topic?

10 A All the employees have had their own experience
11 independently lip with David and Albert and the
12 running of the department and the division and
13 the importance of ultrasound and the effect on
14 residency and fellow training so there are many
15 elements and so each will have their own
16 comments, yes.

17 Q Did Michelle Russell work in the REI Division?

18 A No.

19 Q What about Joan Barthold?

20 A No.

21 Q What about former employees and whether or not
22 you've reached out to any of them for purposes
23 of soliciting their testimony in support of your

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1 Complaint in this case?

2 A Sharon Parent. And Judy McBean has reached out
3 to me.

4 Q Anyone else?

5 A No.

6 Q What do you believe Ms. Parent would be able to
7 offer in terms of testimony as a witness
8 regarding the allegations in your Complaint?

9 A She worked in the REI Division so will have, she
10 will have her opinion of the events involving
11 the allegations.

12 Q Specifically, I want to understand what you
13 discussed with her regarding working in the REI
14 Division and the events regarding the
15 allegations in your Complaint. Specifically.

16 A I asked her if she would speak with my
17 attorneys.

18 Q How long was the conversation with Sharon
19 Parent?

20 A Short. It was, will you speak with my
21 attorneys. Yes. How is your daughter Elizabeth
22 who's pregnant, ill, yes, I'll reach out.

23 Q And with respect to Sharon Parent, did you

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1 consider her a friend?

2 A Yes.

3 Q What about Judy McBean?

4 A Yes.

5 Q And what conversation did you have with Judy
6 McBean regarding potentially testifying in this
7 case?

8 A She contacted me after Jessica contacted her.

9 Q Okay. And what did you discuss with Judy
10 McBean?

11 A She did not understand why Jessica would be
12 offering to represent her or meet with her in
13 Boston.

14 Q What did you say?

15 A I said I had no knowledge of your firm
16 contacting her.

17 Q What else did you discuss?

18 A I told her that she wasn't obligated to have
19 your firm represent her and asked her if she
20 would speak with Katie.

21 Q Okay. What did she say?

22 A She said she would be willing to speak with
23 Katie.

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1 Q Anything else regarding that discussion with
2 Judy McBean?

3 A She said she was reaching out to legal counsel
4 in Brattleboro.

5 Q What, if anything, do you believe Judy McBean
6 would be able to offer by way of her testimony
7 regarding the allegations in your Complaint?

8 A Again, as a member of the REI Division she'll
9 have had her own experience with regard to the
10 allegations in the Complaint.

11 Q But specifically, what do you believe she would
12 be able to offer regarding the allegations in
13 the Complaint?

14 A There will be many things that she can offer.

15 Q Well, what did you discuss with her during that
16 call?

17 A Will you speak with Katie.

18 Q That's it?

19 A We haven't subpoenaed you to this point. I'm
20 not sure why Foley & Lardner are reaching out to
21 you.

22 Q Did you list her as a witness, as one of your
23 potential witnesses in this case?

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1 A Potentially, yes. I think so.

2 Q Yeah. You did. Right?

3 A Sure. But you haven't reached out to the other
4 individuals to represent them so why was Judy
5 different?

6 Q Once again, I mean, this is the third time I'm
7 going to do it. You don't get to ask me
8 questions during this other than to clarify a
9 question. Okay? So I'm going to ask you
10 questions. And the question I have for you is
11 what specific facts do you believe Judy McBean
12 would be able to testify about regarding the
13 allegations in your Complaint?

14 A She has direct observation of David and Albert
15 and their practice style, their billing, the
16 conversations around process of care. She's had
17 direct conversations with Dr. DeMars about
18 potential employment to open, to after a pause
19 be employed at DH. She has direct observations
20 with Dr. DeMars about my status at the
21 organization. She has intimate detail about the
22 running of REI and the, as I say, the process of
23 caring for patients.

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1 Q During the 2015/16/17 time period, was
2 Dr. McBean an employee of Dartmouth-Hitchcock?

3 A She was a consulting provider. She's an
4 employee of Brattleboro Hospital and in her
5 consulting role was employed. She had a
6 clinical appointment but I believe not an
7 academic appointment to the organization.

8 Q And as a result of having a clinical appointment
9 and performing services as a consulting
10 provider, how often would she be working at the
11 REI Division at Dartmouth-Hitchcock?

12 A One to three to four days a month, and she took
13 some call on the weekends. So she would come up
14 in addition to that on the weekends on occasion.

15 Q Was that her schedule to the best of your
16 recollection? I realize this is a long time
17 period, but from the time period of '15 all the
18 way until the REI Division closure?

19 A Yes.

20 Q Did you reach out to any other former employees
21 for purposes of being a potential witness on
22 your behalf in this litigation?

23 A Not that I recall at this point.

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1 Q Turning your attention to one of your claims
2 regarding retaliation, what I'd like to
3 understand are all of the complaints you made on
4 various topics which you believe support your
5 claim of retaliation. And I know you've listed
6 a couple of them, and I can point them out to
7 you in Exhibit, I believe, 4. And just ask you
8 to turn to -- I'll get you there. I'd just ask
9 you to read to yourself paragraph 7 and let me
10 know when you're finished.

11 A Okay.

12 Q Okay. And is that, is paragraph 7 an accurate
13 reflection of the five categories of complaints
14 or concerns that you raised which you believe
15 resulted in retaliatory conduct towards you?

16 A Yes.

17 Q Okay. Now, at the time of Dr. Seifer's hiring,
18 what was your title prior to him becoming
19 Division Director?

20 A Director of Gynecological Ultrasound and Interim
21 Director of Reproductive Medicine and
22 Infertility. IVF Medical Director. Vice Chair
23 of Perioperative Services, although I believe

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1 Dr. DeMars took over those responsibilities when
2 I became ill.

3 Q With respect to the Division Director role that
4 Dr. Seifer was hired into, prior to that time
5 were you, was that the Interim Director role
6 that you're talking about?

7 A Yes.

8 Q Okay. And was it Interim REI Director?

9 A Yes.

10 Q Okay. And how long had you been functioning as
11 the Interim REI Director?

12 A From the time that Dr. Manganiello retired.

13 Q Who appointed you to be Interim REI Director?

14 A It was through Karen Lancaster and Richard
15 Reindollar when they were there.

16 Q And do you recall the year that that would have
17 happened?

18 A No.

19 Q How many years were you in the interim role to
20 your best recollection?

21 A I don't recall.

22 Q Was is more than one?

23 A Yes.

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1 Q A couple?

2 A As I said, I don't recall exact number of years.

3 Q It was for a period of time though, right? It
4 wasn't six months or a year. It was much longer
5 than that, right?

6 A Yes.

7 Q And when Leslie DeMars became Chair of OBGYN,
8 did she continue your role as the Interim REI
9 Director?

10 A Yes.

11 Q Did you ever seek to become the actual Division
12 Director of REI?

13 A Yes.

14 Q When was that?

15 A Before I became ill.

16 Q How did you pursue going from interim status to
17 the actual permanent REI Division Director?

18 A In a conversation with Leslie, meeting.

19 Q Would that have been some time in 2015 or
20 earlier?

21 A I don't recall the date.

22 Q And what transpired during that conversation
23 with Dr. DeMars?

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1 A She said that she was working on getting me the
2 directorship of all of GYN Ultrasound for OBGYN
3 for the Dartmouth Health Alliance, and in her
4 estimation, that would be an important role for
5 me and the use of my strengths.

6 Q What was your response?

7 A I agreed.

8 Q What was the role that she was trying to get
9 you?

10 A Director of Gynecologic Ultrasound under the
11 umbrella of OBGYN for the Dartmouth Health
12 Alliance.

13 Q Okay. Did that actually happen?

14 A Yes.

15 Q When did that happen?

16 A She announced it, I don't remember the date.
17 Around the time that she also, she also
18 announced Rebecca Pschirrer who's a high risk
19 obstetrician becoming the Director of Obstetric
20 Ultrasound and OBGYN.

21 Q And do you recall what year it was?

22 A No.

23 Q Did you have any further conversations with

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1 either Dr. DeMars or anyone else about becoming
2 the full-time Director of the REI Division?

3 A Others have asked me about it at various times
4 and Dr. Esfandiari was encouraging it. It was
5 Dr. DeMars's decision.

6 Q And you'd reached out to Dr. DeMars because you
7 actually wanted to be the permanent REI Division
8 Director.

9 A Correct.

10 Q With respect to the five categories of concerns
11 or complaints that you raised in paragraph 7 of
12 your Complaint, I want to go through each and
13 every one of them.

14 The first one is tolerance of medical care
15 below acceptable standards of care. With
16 respect to that concern, what, if any,
17 complaints did you make regarding that topic?

18 A There are multiple over an extended period of
19 time with regards to Dr. Hsu, with regards to
20 Dr. Seifer, and their medical practices.

21 Q And who specifically did you complain to
22 regarding Dr. Hsu and Dr. Seifer and their
23 medical practices?

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1 A Heather Gunnell and Leslie DeMars.

2 Q And you said you made multiple complaints to
3 them about the medical practice of Drs. Hsu and
4 Seifer?

5 A Correct.

6 Q Do you recall when you first made complaints
7 about Dr. Hsu to Ms. Gunnell or Dr. DeMars?

8 A As I would define a complaint, it would be a few
9 months after Albert started.

10 Q Do you recall when Albert Hsu started at the REI
11 Division?

12 A He started in the summer. I don't remember the
13 year exactly.

14 Q Summer of 2014?

15 A That may be correct.

16 Q Did you have anything to do with his hiring?

17 A No.

18 Q And you made complaints to Ms. Gunnell and Dr.
19 DeMars a couple of months after his hiring?

20 A Within the first few months, I made complaints.

21 Q Did you complain to anyone else other than Ms.
22 Gunnell and Dr. DeMars about Dr. Hsu that you
23 recall?

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1 A I also filled out evaluations for him as Interim
2 Division Director for Credentialing Committee,
3 and as Interim Division Director I also filled
4 out evaluations that were part of the standard
5 hiring practice.

6 Q Any other avenues that you pursued or
7 communicated your complaints about Dr. Hsu's
8 medical practices?

9 A I reported directly to them.

10 Q Okay. When did you first report any concerns
11 about Dr. Seifer in his medical practices?

12 A The summer after he started.

13 Q Some time in 2016? Summer of 2016?

14 A If that's the year he started, yes.

15 Q With respect to Dr. Hsu's medical practice, do
16 you recall generally the concerns you were
17 raising to either Ms. Gunnell or Dr. DeMars?

18 A Yes, and I documented them extensively in a
19 letter to Dr. Seifer and Dr. DeMars.

20 Q That's where you highlighted them?

21 A That's where I synthesized them after months of
22 expressing concern, yes.

23 Q So up until that time, the concerns you were

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1 expressing were verbally to Ms. Gunnell and Dr.
2 DeMars?

3 A And the evaluations that I filled out. There
4 may be other emails, yes.

5 Q Okay. And what about Dr. Seifer? When did you
6 first express concerns in writing to either Ms.
7 Gunnell or Dr. DeMars?

8 A In the summer after he started. I believe he
9 started late winter or early spring.

10 Q Okay. And specifically what do you recall
11 regarding the nature of your concerns or
12 complaints that you raised regarding Dr.
13 Seifer's medical practices?

14 A From the beginning it was he was in the clinical
15 space with Albert seeing patients without having
16 his licensure confirmed with the State of New
17 Hampshire. The secretaries had raised that
18 question to me because he was actually in
19 treatment rooms observing Albert and his
20 independent licensure hadn't been approved by
21 the State of New Hampshire yet.

22 Q So the concerns that you raised were concerns
23 that had been brought to your attention by the

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1 secretaries in the REI Division?

2 A Yes.

3 Q Any other concerns about Dr. Seifer's medical
4 practices that you recall specifically in
5 reaching out to Ms. Gunnell or Dr. DeMars
6 regarding Dr. Seifer's medical practice?

7 A Yes. Dr. DeMars asked me to go in and observe
8 IVF egg harvest directly with Dr. Seifer in
9 August of that summer after she had received
10 multiple complaints from the nursing staff that
11 patients were being put at risk and harmed.

12 Q How do you know she received multiple complaints
13 from the nursing staff that patients were at
14 risk of harm?

15 A The nurses told me directly. They came to me.

16 Q Who were they?

17 A Sharon Parent, Casey Dodge, Mary Martin.

18 Q Anyone else?

19 A Yeah. Pam, I'm blanking on her last name. And
20 then a Jamie, I'm blanking on her last name
21 right now, too. There are individuals who had
22 been present in egg harvest with him.

23 Q Okay. And did you at some point then in August

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1 2016 observe his practices, Dr. Seifer's
2 practices with respect to the IVF egg harvest
3 technique?

4 A Yes.

5 Q And was that the first procedure that you
6 observed Dr. Seifer perform?

7 A I may have observed embryo transfers before
8 that. I don't recall right now.

9 Q How did you raise your concerns? Well, let's go
10 back to the IVF egg harvest, that technique that
11 you saw Dr. Seifer perform in August 2016. What
12 was your general assessment?

13 A That his skill and approach did not match his
14 stated experience.

15 Q How so?

16 A He seemed to me to have very rudimentary
17 technique. He didn't seem to understand the
18 system necessary for the technical aspects of
19 harvest. He struggled with the aspiration of
20 follicles, and it was very out of context to
21 someone of his stated stature.

22 Q Did you communicate any of these concerns to Dr.
23 Seifer at the time?

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1 A Yes. I didn't, I told him I felt that the
2 technique that we utilize is very different than
3 what he performed, and I gave him some
4 remediation comments.

5 Q Okay. How did you express your concerns
6 regarding Dr. Seifer's medical practices to
7 Ms. Gunnell and Dr. DeMars?

8 A Verbally. In writing with Dr. DeMars at the
9 time of his, also in writing at the time of his
10 30-day or 60-day and 90-day review. There were
11 a couple of reviews that I sent comments to.
12 And then when the nurses, the ultrasound techs,
13 the residents, the other faculty were expressing
14 concern to me, I asked them to both go to their
15 bosses and to go directly to Heather and to
16 Leslie to express their concern directly.

17 Q And that was based upon whatever their personal
18 observations were, correct?

19 A Right.

20 Q It wasn't anything that you had firsthand
21 knowledge of?

22 A No.

23 Q Other than what you testified to.

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1 A Yes.

2 Q We've been going about an hour. Why don't we
3 take a quick five-minute break.

4 (Recess taken 10:56 - 11:02 a.m.)

5 BY MR. SCHROEDER:

6 Q Have we exhausted all of your testimony
7 regarding the subject of the issue of the
8 category of tolerance of medical care below
9 acceptable standards of care? That specific
10 category?

11 A We've summarized it. I don't know that we've
12 exhausted it. You know, I gave you a summary of
13 the complaints.

14 Q To the extent that you made any complaints in
15 writing to Ms. Gunnell and Leslie DeMars, they'd
16 be reflected in emails or in the evaluations
17 that you did for either Dr. Hsu or Dr. Seifer?

18 A Not all of them. I didn't write an email for
19 every conversation I had with them.

20 Q The ones that were in writing.

21 A The ones that were in writing?

22 Q That was the question.

23 A Yes.

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1 Q Okay. I want to turn to your allegation
2 regarding concerns or complaints you made about,
3 quote, "fraudulent billing practices." What do
4 you recall specifically about any concerns or
5 complaints you made about the topic of, quote,
6 "fraudulent billing practice," end quote, to
7 anyone at Dartmouth-Hitchcock?

8 A I spoke with Leslie, I spoke with Heather
9 Gunnell, and I raised the issue at team meeting
10 for REI, and I raised the issue at the Value
11 Institute retreats.

12 Q And specifically, what do you recall you stated
13 regarding billing practices and whether or not
14 they were appropriate? At any, to any of these
15 people or any of these events?

16 A They were ordering and performing unnecessary
17 testing and that they were billing for that
18 unnecessary testing.

19 Q Do you recall the specific forms of tests that
20 you believe were unnecessary?

21 A The most notable one was the performance of
22 trial or mock embryo transfers on every female
23 who was being evaluated for infertility.

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1 Q You initially said they were conducting and
2 performing unnecessary testing. Just want to
3 understand who "they" is?

4 A It was Albert and David.

5 Q So both Dr. Seifer and Dr. Hsu?

6 A Yes. Oftentimes they were in the room together
7 doing these things.

8 Q How did you know that? Based on what other
9 people told you?

10 A No. I observed them directly, but also based on
11 what the ultrasound techs were talking to me
12 about.

13 Q Who would the ultrasound techs be that would
14 talk to you about Dr. Seifer's and Dr. Hsu's
15 ordering of unnecessary tests?

16 A The person who roomed the patient who expressed
17 concern was Jennifer, I believe her last name
18 was Carpenter. She was the tech's assistant who
19 roomed the patients. And then Jenice Gonyea and
20 then there were one or two of the other techs
21 expressed concerns, and to my recollection it
22 was Bonnie Nester and perhaps Megan.

23 Q Who attended on a regular basis the REI team

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1 meetings?

2 A It was a flex of individuals who are available,
3 but it was Dr. Seifer, myself, Albert Hsu,
4 Elizabeth Todd, Kelly Mousley, Heather Gunnell.
5 Usually someone from the lab. It may have been
6 Dr. Esfandiari at times. Whoever was available
7 from the lab.

8 Q Anyone else?

9 A Not to my recollection at this point.

10 Q What about the Value Institute retreats? Would
11 that include all of the individuals you just
12 mentioned?

13 A Again, coming and going, yes.

14 Q Right. I understand that. I'm just trying to
15 understand who potentially would attend and --

16 A And then the members of the Value Institute.

17 Q And who would they have been? Who's that?

18 A Katie Wira. There was someone who worked
19 underneath Katie. I'm not sure. I don't
20 remember her name.

21 Q Anyone else?

22 A There was another gentleman who came and went,
23 and I don't remember his name.

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1 Q Okay. Any other avenues that you believe, that
2 you pursued for purposes of raising concerns or
3 complaints about quote, "fraudulent bill
4 practices," unquote?

5 A Not that comes to mind right now.

6 Q Okay. I want to turn your attention to Exhibit
7 2 which are the Dartmouth-Hitchcock or I should
8 say your responses to Dartmouth-Hitchcock
9 Medical Center's First Set of Interrogatories.
10 It was previously marked Exhibit 2.

11 Ask you to turn your attention to page 19,
12 number 12. I'd just ask you to read to yourself
13 the question and response, and then let me know
14 when you're done so I can ask you some questions
15 about it.

16 A Okay.

17 Q Okay. Does this summarize, this response
18 summarize and actually state specifically all
19 the bases that you believe Dr. Hsu and Dr.
20 Seifer were engaging in quote, "fraudulent," end
21 quote, and quote, "unlawful," end quote, conduct
22 by, quote, "order and billing for unnecessary
23 patient testing," end quote?

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1 A It summarizes.

2 Q Okay. Are there any other examples beyond the
3 ones that you've identified here in response to
4 Interrogatory number 12 in Exhibit 2 that you
5 can recall sitting here today?

6 A It's summarized in Interrogatory 12.

7 Q I understand it's summarized. My question is
8 are there any other kinds of tests that you
9 believe were in your mind fraudulent or unlawful
10 that were ordered by Dr. Seifer or Dr. Hsu?

11 A They had a pattern of ordering unnecessary blood
12 tests and additional ultrasounds.

13 Q What's the basis for your believe that they had
14 a pattern of ordering unnecessary blood tests
15 and ultrasounds?

16 A Patients were being asked to come back for very
17 frequent monitoring despite the fact there was
18 no clinical evidence that it was necessary at
19 that juncture.

20 Q How did you know that?

21 A I was reading the ultrasounds. There would be
22 conversation of in-cycling patients with members
23 of the team. The nurses asked me to approach

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1 them to see if they would change their plans.

2 Q Were you responsible for reading the ultrasounds
3 of Dr. Seifer and Dr. Hsu's patients at any
4 point?

5 A Yes.

6 Q What time period was that?

7 A In the time period that I was working in the
8 division that they were working. Dr. Hsu shared
9 some of the responsibility of reading
10 ultrasounds, but we had days that we covered.

11 Q Okay. What about blood tests; what is the basis
12 for your knowledge that they ordered unnecessary
13 blood tests?

14 A The blood tests were the corollary test that
15 went along with the ultrasound, and there was a
16 discussion with members of the team again of
17 currently cycling patients and what the results
18 were and what the plan was, had been made by the
19 attending that was making plans for those
20 patients.

21 Q How many times do you believe either Dr. Hsu or
22 Dr. Seifer ordered unnecessary blood tests which
23 obviously were corollary to the ultrasounds?

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1 A 25 to 50?

2 Q What's the basis for your knowledge on that?

3 A Seeing the ultrasound, seeing the blood test
4 results, evaluating the monitoring sheets and
5 our computerized medical records and
6 conversations with the nursing staff and with
7 Albert and David about those results.

8 Q How many times did you approach either Dr.
9 Seifer or Dr. Hsu about this specific issue of
10 ordering blood tests and ultrasounds?

11 A At least ten.

12 Q What was their response?

13 A Albert oftentimes would reconsider but not
14 always. David wanted to persist with his plan.
15 And I directed the nurses to have conversations
16 with the two of them.

17 Q Okay. Anything else regarding this particular
18 category that we've just gone over?

19 A No.

20 Q I'd ask you to turn to number 13 and ask you to
21 read to yourself. Let me know when you're
22 finished.

23 A Oh, yes.

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1 Q Let me know when you're finished.

2 A Okay.

3 Q Interrogatory number 13 asks you to identify
4 each and every law that you contend was violated
5 by the junior physician's alleged billing
6 practices as alleged in paragraph 78 of the
7 Complaint.

8 You go on to recite a number of statutes in
9 there and a specific issue regarding use of
10 space designated for inpatient care related to
11 outpatient couples. I think you testified
12 briefly about this the first day.

13 A Yes.

14 Q It's the same subject, correct?

15 A Correct.

16 Q How many times, this relates to Dr. Hsu,
17 correct?

18 A Both of them, but it was a predominant habit of
19 Dr. Hsu.

20 Q Okay. I don't think see anything in here about
21 Dr. Seifer doing this.

22 A He on occasion was observing Dr. Hsu's clinic.

23 Q Okay. So he saw it, but he didn't do it

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1 specifically.

2 A Correct.

3 Q How many times do you believe Dr. Hsu took
4 outpatient couples to inpatient space and then
5 billed for outpatient services within the
6 inpatient space?

7 A Numerous. Multiple. More than 50.

8 Q What's the basis for your knowledge that would
9 constitute billing fraud for somebody to see
10 outpatient couples within inpatient space? Like
11 what's your specific knowledge?

12 A Direct conversations with practice managers
13 within OBGYN.

14 Q Do you know how the services that Dr. Hsu
15 performed were actually billed, what actually
16 occurred?

17 A Yes. They were outpatient services.

18 Q And they were billed how?

19 A They would have been structurally billed through
20 the Visit Navigator in our computer system as
21 ambulatory outpatient services because the
22 patient was booked in an outpatient context.

23 Q Okay. And would that be less or more than if

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1 they were as an inpatient?

2 A I don't know that.

3 Q Okay. And do you know specifically how Dr.
4 Hsu's patients were billed under the scenario
5 that you've highlighted in Interrogatory number
6 13?

7 A As outpatient services.

8 Q Okay. And what do you believe was fraudulent
9 regarding or improper regarding the actual
10 billing that was done?

11 A That proper billing practices do not allow for
12 care of an outpatient in an inpatient setting,
13 and that had been reinforced to many members of
14 the department over many years from our practice
15 manager such that if an inpatient needs a
16 procedure that can be done as an outpatient, we
17 can't bring them to the outpatient setting and
18 the reverse is true as well. If a patient is
19 designated as an outpatient, we cannot bring
20 them to an inpatient setting for consultation or
21 procedures.

22 And there was a consultation room set up
23 specifically for these services that was across

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1 the hallway from where Dr. Hsu insisted on
2 seeing patients, and it was made very clear to
3 me by prior coding specialists at DHMC that I
4 needed to use that facility. We had multiple
5 coders, and it was made very clear to me by the
6 practice managers that we could not bill for
7 consultative services in an inpatient setting.

8 Q Okay.

9 A And that for the many years both by coders and
10 by the, that it was inconsistent with proper
11 billing practice and by the practice managers.

12 Q With respect to this and how Dr. Hsu would have
13 processed it in that Navigator system, they were
14 treated as outpatients as if they had been seen
15 in an outpatient space, correct?

16 A Correct.

17 Q So and that was what your understanding was,
18 correct?

19 A They were outpatients treated as outpatients at
20 an inpatient setting, yes.

21 Q And you complained about this to Dr. Seifer as
22 well as Heather Gunnell and Dr. DeMars, correct?

23 A Correct.

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1 Q Do you recall whether or not this was
2 communicated to anyone else?

3 A No.

4 Q Did you do this verbally or in writing?

5 A Both verbally and in writing to Dr. DeMars, and
6 verbally to Heather and verbally to David
7 Seifer.

8 Q With respect to your comment here, inpatient
9 space is often billed at a higher rate, right?

10 A I assume so. Yes.

11 Q Well, you said that.

12 A Right.

13 Q These are your Interrogatory Answers and you
14 signed them under the pains and penalties of
15 perjury. So that's a comment you made in here,
16 correct?

17 A Correct.

18 Q And so am I correct that if somebody's billed
19 outpatient space, it would be lesser than an
20 inpatient space?

21 A Depending on what level of service they bill,
22 Mr. Schroeder.

23 Q Well, you state here inpatient space is often

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1 billed at a higher rate, right?

2 A Correct. That's what I said.

3 Q And to your knowledge, none of the patients that
4 receive outpatient care were billed for
5 inpatient designated rooms at a higher rate?

6 A I couldn't state about the rate.

7 Q Well, you told me that they were billed as
8 outpatients and outpatient space, right?

9 A Please restate your question.

10 Q Can you say that again?

11 COURT REPORTER: And to your knowledge,
12 none of the patients that receive outpatient
13 care were billed for inpatient designated rooms
14 at a higher rate?

15 A Again, I can't state the rate that they were
16 billed at. Albert would have selected that
17 himself.

18 Q So your testimony though earlier was that they
19 would have been billed as outpatients in
20 outpatient space, right?

21 MR. VITT: Objection. I don't think that's
22 what she said.

23 MR. SCHROEDER: Can you go back?

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1 COURT REPORTER: They would have been
2 structurally billed through the Visit Navigator
3 in our computer system as ambulatory outpatient
4 services because the patient was booked in an
5 outpatient context.

6 BY MR. SCHROEDER:

7 Q Does that refresh your recollection? So that
8 would have been as if they had been seen in an
9 outpatient space even though they'd been seen in
10 an inpatient space?

11 A Correct.

12 Q Okay.

13 A But it doesn't say anything about rate in that
14 comment.

15 Q I understand that. But your comment in your
16 Interrogatory response is that inpatient space
17 is often billed at a higher rate, correct?

18 A Correct.

19 Q Ask you to go back to Interrogatory 11 which is
20 page 17. Before I ask you a question about
21 Interrogatory 11 I just want to make sure. Have
22 we exhausted your knowledge about the category
23 of, quote, "fraudulent billing practices," end

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1 quote?

2 A That I recall at this period of time.

3 Q And as you state in your Interrogatory
4 responses.

5 A Correct.

6 Q Okay. Interrogatory 11 asks identify each and
7 every ultrasound tech who expressed further
8 concern that unnecessary and inappropriate
9 procedures were being performed on patients
10 without appropriate consent as alleged in
11 paragraph 62. You see that?

12 A Yes.

13 Q Now the third category that we went over from
14 paragraph 7 of your Complaint related to
15 performing procedures on patients without
16 consent, and I just want to understand the basis
17 for your belief, well, the basis for your
18 complaint or concern that you raised regarding
19 that topic. Did you have personal knowledge or
20 was it something that other people told you?

21 A I have personal knowledge from a conversation
22 with Jenice Gonyea.

23 Q Personal knowledge is based upon what you

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1 personally observed. Your knowledge is based
2 upon what Ms. Gonyea told you?

3 A My knowledge is based on what Ms. Gonyea told
4 me. Yes.

5 Q Do you have any personal firsthand knowledge of
6 any instances where either Dr. Hsu or Dr. Seifer
7 performed procedures on patients without their
8 consent?

9 A I was not present for these procedures.

10 Q Okay. Let's try to answer the question though.

11 Do you have any personal firsthand
12 knowledge of any instances where Dr. Seifer or
13 Dr. Hsu performed procedures on patients without
14 consent being in place?

15 A I did not observe any procedures where the
16 consent had not been obtained beforehand.

17 Q And to your knowledge, the only person who
18 notified you about this issue of performing
19 procedures on patients without their consent
20 came from Jenice Gonyea?

21 A She was the primary person who reported it. It
22 was also expressed by Jennifer Carpenter, but I
23 don't know if she personally observed it or not.

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1 Q Okay. Any other individuals other than Jenice
2 Gonyea or Jennifer Carpenter who raised the
3 issue of consent regarding procedures on
4 patients of Dr. Hsu or Dr. Seifer?

5 A Elizabeth Todd had a conversation with Jenice as
6 well.

7 Q How do you know that?

8 A She brought it to my attention. She came to me
9 about it.

10 Q Who brought it to your attention?

11 A Both Jenice and Elizabeth Todd.

12 Q So other than Jenice Gonyea, Beth Todd and
13 Jennifer Carpenter, anyone else that raised
14 concerns about lack of consent for procedures
15 done by Drs. Hsu or Seifer?

16 A No. Well, I'll amend that from the fact that
17 Dennis Seguin who is Jenice's supervisor came up
18 to talk to me and I sent him to Dr. DeMars.

19 Q Did you have any discussion with him about it?

20 A Very truncated. We were in the middle of a work
21 session, and I suggested that he go directly to
22 Heather. I suggested he go to Heather, he go to
23 Leslie and go to the head of ultrasound.

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1 Q And do you know if he did so?

2 A I do not.

3 Q And the two people that you reached out to were
4 Heather Gunnell and Dr. DeMars, correct?

5 A Correct.

6 Q And do you know whether or not -- did you reach
7 out to anyone else in Dartmouth-Hitchcock
8 management to express concerns that had been
9 raised to you by these individuals?

10 A No.

11 Q Do you have any knowledge as to whether or not
12 Ms. Gunnell or Dr. DeMars followed up with Drs.
13 Hsu or Seifer?

14 A Dr. DeMars told me that she would speak with
15 them and that it would stop.

16 Q Do you know whether she did?

17 A I don't directly have knowledge of whether she
18 did or not.

19 Q What was the time frame when you had that
20 conversation with Dr. DeMars?

21 A Within days of Jenice raising the concerns.

22 Q And do you recall a specific time period when
23 that happened?

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1 A No.

2 Q Do you recall the year it happened?

3 A It was winter/spring of 2017.

4 Q With respect to the -- I just want to go back to
5 a topic we discussed before. Trial or mock
6 embryo transfers. Have you actually ordered
7 them for patients?

8 A Sure.

9 Q And was your issue with respect to Dr. Seifer or
10 Hsu ordering them that they ordered them for all
11 infertility patients as opposed to just a
12 portion of them?

13 A Yes.

14 Q Did they actually perform the tests on those
15 patients?

16 A Yes.

17 Q And you just believe that you shouldn't have to
18 do them for all infertility patients?

19 A It is not the standard of care.

20 Q When you say it's not the standard of care,
21 what's that based on?

22 A The American Society for Reproductive Medicine
23 guidelines.

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1 Q Is there something in there that says anything
2 about trial or mock embryo transfers?

3 A It's not part of the paradigm for workup and
4 evaluation of all infertility patients, and of
5 the REI providers that I currently practice
6 with, and the REI providers that preceded Albert
7 and David it was not part of the new infertility
8 patient workup.

9 Q I understand it was not part of the new
10 infertility workup either with the people you
11 work with now or the people that you worked with
12 before Dr. Seifer and Hsu. My question is is
13 there a specific provider in the ASRM guidelines
14 or protocols that actually addresses this
15 specific issue?

16 A It's not mentioned as part of the paradigm.

17 Q And you believe because it's not mentioned as
18 part of the paradigm that it would have been
19 inappropriate to do it for all infertility
20 treated couples?

21 A Yes.

22 Q Have we discussed all of the issues relating to
23 the category performing procedures on patients

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1 without consent as identified as the third
2 category of concerns or complaints that you
3 raised?

4 A To my knowledge at this point. Yes.

5 Q Turning your attention to the fourth category
6 from paragraph 7 of your Complaint, you raised a
7 concern about a Zika-exposed patient and the
8 fact that you raised a concern about a
9 Zika-exposed patient being impregnated through
10 assisted reproduction, correct?

11 A Correct.

12 Q And can you explain to me what that relates to
13 specifically?

14 A Would you please rephrase your question?

15 Q Sure. The fourth category of concerns or
16 complaints that you believe support your
17 retaliation claim is regarding a Zika-exposed
18 patient being impregnated through assisted
19 reproduction.

20 A Correct.

21 Q And at some point you raised a concern or
22 complaint about that, correct?

23 A Correct.

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1 Q What I want to understand is what did that
2 actually entail? What were the specifics about
3 that event that caused you to raise a concern or
4 complaint?

5 A There's an Interrogatory. Shall we refer to
6 that?

7 Q If that would help you refresh your
8 recollection. Let's go to page 24 of your
9 Interrogatory Answers.

10 Just so the record reflects, the witness is
11 reviewing the response to Interrogatory number
12 16 relating to paragraph 93 of her Complaint
13 which includes a reference to the subject of
14 Zika virus, specific patients being treated in
15 that context.

16 Have you had a chance to review that
17 response?

18 A I'm still reading it.

19 Q Read the whole response because that will also
20 relate to the fifth category of concerns or
21 complaints you raised which you believe support
22 your retaliation claim.

23 A Okay.

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1 Q Now, with respect to the category related to
2 your concerns about the Zika-exposed patient,
3 does this refresh your recollection as to the
4 specific nature of that concern or complaint?

5 A Yes.

6 Q What do you recall as to your involvement with
7 respect to this particular patient and the issue
8 of whether or not one or both members of the
9 couple had been exposed to the Zika virus?

10 A I was asked by Dr. Esfandiari to review their
11 chart as he had concerns about the care of this
12 couple. I reviewed the chart. As IVF Medical
13 Director that would be appropriate.

14 Q Okay. What did you determine?

15 A The couple had, I believe on the day that they
16 saw Albert in clinic they traveled that night to
17 Brazil which is a known Zika endemic area, and
18 there were many babies born with congenital
19 anomalies to women in Brazil, and it was all
20 over the news and all over our national
21 organization's website, the American College of
22 OBGYN's website and the CDC with guidance that
23 had come down about the care of these patients

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1 where there is ART care being given. The couple
2 also traveled to the Caribbean subsequent to
3 this which is also on the map for Zika exposure.
4 So not one but two exposures, and they were
5 having unprotected intercourse in that period of
6 time. And so it's not just mosquitos. In terms
7 of transmission, it became known in this period
8 of time where there was a rapidly evolving
9 science that men could transmit the Zika virus
10 for a prolonged period of time in their semen
11 despite having negative blood tests.

12 Q Okay. What, if anything, did you do as a result
13 of reviewing the relevant charts?

14 A I called Risk Management.

15 Q Who did you call in Risk Management?

16 A I spoke with Karen Boedtke.

17 Q Did you speak with anyone else in Risk
18 Management relating to the subject?

19 A Not that I recall at this point.

20 Q Okay. And what, if anything, did you say or do
21 with respect to Risk Management?

22 A I spoke with Karen to say that we were not
23 meeting the standard recommendations from the

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1 CDC or from our national organization to proceed
2 with care for this couple and allow them to go
3 forward with an embryo transfer, and I sent her
4 a copy of the guidance by email.

5 Q And the guidance you're referring to
6 specifically, what do you recall that was?

7 A They should wait six months.

8 Q No. I understand that. But the name of the
9 guidance that was coming from what organization?

10 A The CDC, ASRM which is American Society for
11 Reproductive Medicine, and the American College
12 of OBGYN as well as the World Health
13 Organization had recommendations.

14 Q What, if any, response did you receive from
15 Karen Boedtke?

16 A She told me that David and Risk Management to my
17 recollection now had written a statement for the
18 couple to proceed assuming the risks of that
19 transfer.

20 Q Had you ever seen a consent form or a document
21 like that in the past?

22 A No.

23 Q Used in the REI Division?

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1 A No.

2 Q Did have you any personal interaction with Dr.
3 Seifer or Dr. Hsu about this particular patient?

4 A Yes.

5 Q This couple?

6 A Yes.

7 Q And what did you -- let's first exhaust your
8 discussions with Risk Management. How many
9 conversations did you have with them?

10 A One and a subsequent email.

11 Q So one conversation with Karen Boedtke and then
12 one email to her?

13 A One or two. Yes.

14 Q Anyone else in Risk Management that you spoke
15 to?

16 A Not that I recall at this point.

17 Q And that was the one and only time that you'd
18 reached out to Risk Management regarding Dr.
19 Seifer and Dr. Hsu, correct?

20 A No.

21 Q What other time?

22 A We had other conversations about patients that
23 were seeking remuneration for their care but

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1 also lodging complaints about their care.

2 Q Well, I asked you about any concerns or
3 complaints that you raised and you said you'd
4 raised them with Ms. Gunnell and Dr. DeMars and
5 I asked you anyone else and you said no. Now
6 you're telling me you had conversation with Risk
7 Management about other conversations regarding
8 complaints lodged with the hospital. So when
9 did those occur?

10 A Could you clarify your question? Are we talking
11 about Zika or are we talking about the process
12 of care?

13 Q I'm talking about now any time that you had
14 reached out to Risk Management. The only time
15 you identify in your Interrogatory responses
16 which are 26 pages in length that you reached
17 out to Risk Management to raise a concern or
18 complaint related to this issue of the Zika
19 virus. I then asked you whether or not that was
20 the only time because that's what's reflected in
21 all of your Interrogatory responses. Now you're
22 telling me that you've reached out to Risk
23 Management or spoke to them on other occasions

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1 about Drs. Hsu and Seifer.

2 A What is your question?

3 Q I want to know how many times you spoke with
4 Risk Management regarding any concerns or
5 complaints about Drs. Hsu or Seifer.

6 A They may have contacted me and then I reached
7 back out to them.

8 Q Okay. But this was the one time that you
9 contacted them regarding an issue relating to
10 Dr. Seifer or Dr. Hsu?

11 A This is the one time I reached out to them with
12 regards to the Zika virus.

13 Q Right. But do you recall any other instances
14 that you reached out to Risk Management
15 regarding Drs. Hsu or Seifer as you sit here
16 today?

17 A I had multiple conversations with them about
18 specific patient care issues, both in email and
19 on the phone when they contacted me. So the
20 definition of "reaching out" is I would ask you
21 what is the definition of "reaching out."

22 Q Well, so it's one way. It's one way. You
23 reached out to them. Did you contact Risk

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1 Management for the purposes of any concerns
2 regarding Dr. Seifer and/or Hsu other than the
3 Zika virus, and you said well, there were these
4 other communications, but it's where they
5 initially reached out to you and then you
6 reached back out to them.

7 A That I recall at this point.

8 Q Right. And so the multiple conversations that
9 you had with Risk Management about patient care
10 issues, I want you to identify those specific
11 instances. So first of all, if you spoke to
12 Risk Management did you speak to anyone ever
13 other than Karen Boedtke?

14 A Yes. And I can't recall who.

15 Q More than one person?

16 A Yes.

17 Q You have no idea who?

18 A No. Not right now.

19 Q Okay.

20 A It was whoever picked up the phone and called us
21 back. It's how they run things in their office.

22 Q And you recall the specific examples of
23 conversations you had with Risk Management about

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1 any patient care issues for Dr. Seifer.

2 A No.

3 Q And do you recall the specific nature of any
4 conversations you had with Risk Management about
5 patient care issues involving Dr. Hsu?

6 A Yes.

7 Q What do you recall?

8 A There was a patient or a couple that I had
9 initially cared for with one of my partners for
10 their first pregnancy who were re-establishing
11 care, and he was part of the Dartmouth Medical
12 School class. They were coming back for their
13 second pregnancy. I saw them in the clinic
14 right before I was ill, and we had established a
15 plan to go forward.

16 After I became ill, Dr. Hsu took over the
17 care of the couple. I had documented a short
18 note in the chart saying she got pregnant with
19 this treatment previously. We should do the
20 same. If it's not broke, don't fix it
21 basically.

22 Q Um-hum.

23 A And he changed the plan in cycle and instead of

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1 choosing to inject sperm into the egg for
2 fertilization they elected to do a routine IVF
3 which was just washing sperm and putting it into
4 the dish with eggs. She was young. They had a
5 complete failed fertilization cycle. They were
6 paying out-of-pocket as a medical student.
7 There was a lot of social reason for them to
8 have a large family, and they were devastated by
9 the failed fertilization.

10 Q Okay.

11 A They did not become pregnant and lodged a
12 complaint, I believe, with Patient Relations,
13 with Heather Gunnell, and I believe from there
14 it was sent to Risk Management. Leslie became
15 involved, and I got an email from Risk
16 Management saying help us to understand this.
17 So I had conversations about that patient or
18 that couple.

19 There was a, there's a series of couples
20 that I'm not recalling all the specific
21 circumstance right now where Albert made
22 clinical decisions and the patients were unhappy
23 with their care, and in review by Dr. DeMars,

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1 she asked me when I returned to assume the care
2 of these couples directly one-on-one, and we
3 wrote off their charges for IVF and our
4 services.

5 Q Do you know how many couples you're talking
6 about?

7 A I'd say five to eight.

8 Q To your knowledge had any patients of yours ever
9 lodged any complaints with Patient Relations or
10 Risk Management or anyone else at the hospital
11 regarding care?

12 A Sure. Yes.

13 Q How many times has that happened?

14 A Three to five in 20 years.

15 Q Other than what you just stated, are there any
16 other instances where you had communications
17 with Risk Management about Dr. Hsu that you
18 recall?

19 A It was all related to specific patient care
20 complaints and concerns to my recollection at
21 this point.

22 Q That's what you were just testifying to,
23 correct?

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1 A Correct. May I take a break?

2 Q Absolutely. I think lunch will be here
3 momentarily.

4 (Lunch recess 11:59 a.m. - 12:55 p.m.)

5 BY MR. SCHROEDER:

6 Q Okay. Just going back on the record.

7 We just left off on the fourth category of
8 concerns, complaints that you believe Form the
9 basis of your retaliation claim. The fifth
10 category relates to -- and it's the fifth and
11 final one, failing to retain necessary personnel
12 to validate federally required data reports upon
13 closing the REI Division. Do you see that?

14 A Page 17?

15 Q We're on page 25 of the Interrogatory responses.

16 A Okay.

17 Q Sorry.

18 A That's all right. I got it.

19 Q It was failure to retain appropriate physician
20 staff with knowledge as required to full-time
21 validation and reporting obligations. That was
22 the fifth category. And I think this second
23 part of your response, Interrogatory 16 speaks

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1 to that.

2 A Correct.

3 Q Am I correct?

4 A Yes.

5 Q Okay. And I understand that you believe that if
6 you were still employed there, you would have
7 been able to validate the data required by SART?

8 A Yes.

9 Q What does SART stand for?

10 A Society for Assisted Reproductive Technology.

11 Q Okay. With respect to that category of concerns
12 that you believe forms the basis of your
13 retaliation claim, did you raise those concerns
14 or complaints with anybody at
15 Dartmouth-Hitchcock?

16 A Yes.

17 Q When?

18 A I spoke to Leslie about it, and I believe that I
19 address it in my letter which we should pull
20 out. Right?

21 Q Sure. Letter on or about May 25th, I think,
22 which is Exhibit 12.

23 A I'd say --

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1 Q You're referring to Exhibit 12?

2 A Yes.

3 Q Sorry. Okay. What page?

4 A Third page.

5 Q Okay. What do you say with respect to this
6 topic?

7 A Other notable roles I have served and would
8 continue to serve that are clearly of importance
9 to DH include providing clinical knowledge for
10 FDA and CAP inspections for Reproductive
11 Medicine Lab, liaison to UVM Medical Center for
12 all infertility and ART patients including
13 cancer patients who need urgent cryopreservation
14 of gametes or embryos, and three, continued
15 education resources for the residents on REI
16 topics. I don't specifically talk about SART in
17 there.

18 Q Okay. But this is one of the places that you
19 raised just some of the things that you had been
20 doing?

21 A Right.

22 Q And would continue to do if you were retained,
23 right?

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1 A Correct.

2 Q And with respect to the, that was May 25th,
3 2017. Is that the same time frame in which you
4 spoke to Leslie DeMars about your ability to
5 fulfill the role regarding reporting obligations
6 to SART?

7 A Yes.

8 Q Was that one of the followup conversations after
9 you'd been informed of the closure of the REI
10 Division?

11 A Yes.

12 Q Anything else about this fifth category that
13 we've just gone over beyond what you've
14 testified to and is in your Interrogatory
15 responses?

16 A No.

17 Q Okay. With respect to the next Interrogatory
18 which is on the next page of --

19 A This is my letter.

20 Q I'm sorry.

21 A So this one?

22 Q As your counsel pointed out, number 17 which is
23 page 26. And the Interrogatory asks you to set

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1 forth the full factual basis for your contention
2 that Defendants discriminated and retaliated
3 against you based on your alleged disability.
4 And after -- let me know when you've had a
5 chance to review the whole response.

6 A Yes.

7 Q Okay. So I just want to walk through your
8 response on this topic now that you've had a
9 chance to review your response to Interrogatory
10 number 17 in Exhibit 2. So can you tell me whom
11 you believe had made complaints about you,
12 quote, "not pulling my weight," end quote, and
13 "to handling less complex types of work," end
14 quote?

15 A Dr. Seifer, Dr. Hsu, Dr. Regan Theiler.

16 Q Regan Theiler?

17 A Yes.

18 Q Who was that?

19 A She was head of the generalists' division.

20 Q Do you know whether she had anything to do with
21 the closure of the REI Division?

22 A I do not know that she had any, no.

23 Q Okay. And you believe that the concerns or

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1 complaints about you were from Dr. Seifer and
2 Hsu?

3 A Yes.

4 Q And how did you learn about these concerns or
5 complaints? Who told you?

6 A Dr. Hsu and Dr. Seifer. Largely Dr. Seifer.
7 And I can't remember who said there was
8 expressed concern about my not being in the
9 backup GYN call.

10 Q Do you know who made that concern known to you?

11 A It was said that it was from the general OBGYN
12 group.

13 Q Okay. Second paragraph states, quote, "On the
14 day the announcement was made of the closure of
15 the REI division in the meeting with a member of
16 the staff of Employee Relations and Dr. Ed
17 Merrens, Dr. Merrens counseled me not once but
18 three separate times to stay out on disability,"
19 end quote. What was the nature of that
20 conversation that you had with Dr. Merrens?

21 A He was present in the room at the time that the
22 Employee Relations individual was sitting across
23 the table from me. Dr. Merrens was sitting to

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1 my right, and it wasn't per se a conversation.
2 It was me in a flood of tears sobbing as the
3 Employee Relations person handed me my
4 separation or my package. And I cried, and Dr.
5 Merrens said it's okay, you can stay out on our
6 disability. I'm sorry. I realize that this was
7 a -- I can't remember exactly how he phrased
8 it -- flagship program or something like that,
9 and then he said you can stay out on our
10 disability three times.

11 Q Did you make any response to him on that topic?
12 Specifically?

13 A No. I was completely in a point of sadness and
14 disbelief.

15 Q How would you describe your relationship with
16 Dr. Merrens over the years?

17 A Up and down.

18 Q Up and down? In what way?

19 A Sometimes positive and sometimes negative.

20 Q How was your relationship with Dr. Merrens
21 negative?

22 A He seemed less than pleased when I engaged
23 Geoffrey around my mediation.

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1 Q When you say you engaged Geoffrey, Mr. Vitt?

2 A Yes.

3 Q And the mediation you're referring to is back in
4 2013, thereabouts?

5 A Somewhere in there, yes.

6 Q Was that relating to conflicts that you were
7 having with Dr. Reindollar?

8 A It was mediation with Dr. Reindollar around
9 conflicts with Dr. Reindollar.

10 Q Okay. And what do you think, in what way was
11 Dr. Merrens negative with respect to that issue?

12 A He said this is not what we're trying to do
13 here, and I said I'm trying to understand the
14 process of mediation, this is new to me, and the
15 tenor of his involvement, I perceived, had
16 changed.

17 Q In what way?

18 A He was far more distant than he'd been and more
19 brusque in my communications with him.

20 Q Okay. Other than that one issue or event, any
21 other instances where he was negative with you?

22 A Not that I recall right now.

23 Q And what about ways in which he was positive and

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1 you had a positive experience with Dr. Merrens?

2 A When I formed the relationship to teach UVM
3 fellows and he learned about it, he sent me a
4 very or a copy or a very positive email that he
5 had copied, I believe, to Jim Weinstein as well
6 saying this is an example of, you know,
7 collaborative or excellent work within the
8 region between the two organizations.

9 Q Had you had other interactions with him over the
10 years?

11 A Not that I recall directly now.

12 Q Did you ever seek his counsel or support or
13 advice regarding your potential move to Hawaii?

14 A That was around the mediation time.

15 Q It was.

16 A Second mediation.

17 Q How many mediations were there?

18 A Two.

19 Q When was the first one?

20 A I don't recall the exact year.

21 Q Second one was in 2013-ish?

22 A I believe. And I didn't, just to correct you, I
23 didn't seek him out.

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1 Q Well, I'm asking you whether you did.

2 A I'm saying no.

3 Q Okay. Well, did you discuss with him or ask for
4 his advice or counsel regarding the potential
5 move to Hawaii?

6 A He called me up and asked me if I would meet
7 with him, owing to your definition of reaching
8 out or seeking.

9 Q Okay. And when he reached out to you, did you
10 have a discussion?

11 A Yes.

12 Q As a result?

13 A Yes.

14 Q What was the nature of that discussion?

15 A It was positive.

16 Q Okay. In what way?

17 A He seemed to understand the issues and agreed to
18 mediate between Richard and I initially.

19 Q Okay. Was he supportive of you staying,
20 remaining at Dartmouth-Hitchcock as opposed to
21 moving to Hawaii?

22 A At first. And then it was pretty clear that he
23 wasn't going to step in to make anything

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1 different for me.

2 Q In what way?

3 A He said to me we're not, I've spoken with Jim
4 Weinstein and we're not going to support any of
5 your requests.

6 Q What was the nature of those requests?

7 A More support for clinical staff, both in
8 physician and nursing, better salary, a request
9 to have GYN ultrasound under the umbrella of
10 OBGYN and not radiology are the ones that come
11 to mind right now.

12 Q Had you received an offer to move to Hawaii?

13 A Yes.

14 Q And did you use that offer as a negotiating chip
15 with Dartmouth-Hitchcock?

16 A I made them aware of it, yes.

17 Q Okay. And a number of the things you were
18 asking for had monetary component to them,
19 correct?

20 A Yes.

21 Q In your Complaint you referred to Dr. DeMars as
22 a vocal supporter of yours, correct?

23 A Yes.

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1 Q And how was Dr. DeMars a vocal supporter of
2 yours?

3 A She told me that she had sent an email to
4 Administration to have a preliminary meeting to
5 discuss the possibility of pausing the REI
6 Division. And when she got to the room, instead
7 of being Ed and maybe one other Administrator,
8 it was a room full of people including Marketing
9 and Risk Management or legal counsel of some
10 sort, and that in her view it looked like the
11 train was already on the track, and that she was
12 very adamant with Ed that I was important to the
13 department and I was responsible for her second
14 child.

15 And she told me that she didn't know until
16 the week before I was going that I was actually
17 on the list to be terminated; that she
18 understood we would be pausing, and I would be
19 still part of the department.

20 Q Any other statements relating to that
21 discussion?

22 A Not that I recall right now.

23 Q How do you believe, is that the basis for your

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1 belief that Dr. DeMars supported the idea of
2 maintaining or reopening the REI Division as you
3 alleged in your Complaint?

4 A Actually for months she'd been telling me that
5 in meetings that I had with her.

6 Q Meetings after the closure of the REI Division?

7 A Before. Before.

8 Q In your Complaint you said she supported the
9 idea of maintaining or reopening the REI
10 Division. Was it also assumed there would be a
11 pause during those discussions?

12 A Yes. With me, yes.

13 Q What was the basis for the pause?

14 A Reorganization. She told me that Maria Padin
15 had agreed that David was not going to be a fit
16 for the organization, and he would be leaving.
17 Short time later, maybe a month, six weeks, two
18 months later she told me Albert would be going
19 as well and that Dan Grow would be interviewed
20 behind the scenes, and that when patient volume
21 allowed, Judy McBean would be coming up, and
22 that I should separate myself from the turmoil,
23 keep my head down, and get well.

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1 Q Would it be fair to say that you had a close
2 friendship with Dr. DeMars?

3 A At one point, yes.

4 Q And when did that end?

5 A At the end of the REI Division. My last day.

6 Q Was that on or about the start of June 2017?

7 A Yes. Maybe even before that.

8 Q Other than the closure of the REI Division, was
9 there anything that precipitated the end of the
10 close friendship that you had with Dr. DeMars?

11 A No.

12 Q Do you have any facts as you sit here today that
13 you believe demonstrate that Dr. DeMars is
14 connected in any way to your retaliation claim?

15 A I'm sorry. I don't understand that question.

16 Q Go ahead.

17 A No, I understand what you said. Can you
18 rephrase your question, please?

19 Q You made a retaliation claim in this case,
20 correct?

21 A Right.

22 Q And you're claiming that you made a series of
23 complaints and concerns known to the hospital,

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1 correct?

2 A Yes.

3 Q And that as a result of making those claims and
4 concerns known to the hospital that you were
5 retaliated against by the hospital.

6 A Yes.

7 Q You understand that. You have retaliation
8 claims in this case.

9 A Yes.

10 Q Okay. What I want to understand is how if at
11 all Dr. DeMars is connected in any way to your
12 claims of retaliation?

13 A There is a long list of individuals, patients
14 and providers, who had sought out Dr. Merrens on
15 behalf of the program and on my behalf to ask
16 him to reconsider my employment.

17 Q And she was one of them.

18 A She told me she was one of them. Her emails
19 dated around the time of the closure indicate
20 something different.

21 Q And those are emails that you've seen in the
22 course of discovery in this litigation, correct?

23 A Correct.

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1 Q Prior to that though, prior to seeing those
2 emails, and you believe those emails have what
3 connection to your claims of retaliation?

4 A She was clearly presenting two sides, two
5 different opinions to each side, and clearly in
6 the content of those emails stating that there
7 are reasons not to keep me.

8 Q And what do you believe the reasons were that
9 she was expressing?

10 A I'd have to -- let's get the email out.

11 Q I want to ask you.

12 A Well, I need to see the detail of the email.

13 Q No. I'm going to ask you first, what are the
14 actual reasons that you believe she put forth as
15 to why the division should be closed and you
16 should lose your employment.

17 MR. VITT: When you say -- I'm sorry. I
18 object. The action, meaning what did she --

19 MR. SCHROEDER: Her reasons. Right.

20 MR. VITT: What did she say.

21 MR. SCHROEDER: Well, what her reasons
22 were --

23 MR. VITT: One question is what did she

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1 say. And the second question is what did she
2 actually believe. And I object because I don't
3 think the question is clear.

4 MR. SCHROEDER: I didn't say what she
5 believed. I never said the word believe. If
6 you want to go back --

7 MR. VITT: Don, I understand what you said.
8 I mean, I heard the question, and the reason I'm
9 objecting is I don't know whether the question
10 asked Dr. Porter what did Dr. DeMars say in the
11 emails or are you asking her what do you think
12 she actually believed when she wrote it.

13 BY MR. SCHROEDER:

14 Q All right. I don't want to get into what Dr.
15 DeMars did or didn't believe because you can't
16 get into her -- that would be asking you to
17 speculate. So what I'm asking you is what do
18 you understand the reasons she set forth as to
19 the basis for terminating your employment?

20 A That I had team-splitting behavior, and that the
21 institution would have had to fire David and
22 Albert for cause is what I remember about that
23 email at the present time.

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1 Q That's an email that you saw in the context of
2 this case, correct?

3 A Yes. The email that you refuse to release.

4 Q Actually, since you've seen the email, it's
5 actually an email that was produced pursuant to
6 the court order.

7 A Pursuant to the court's order, yes. Judge
8 Crawford asked you to release it.

9 Q Right. I'm well aware of what Judge Crawford
10 asked us to do.

11 With respect to my question though about
12 her connection to your claim of retaliation,
13 what are the facts that you're aware of that Dr.
14 DeMars retaliated against you?

15 A She had the opportunity to at least state in
16 favor of keeping me when there was a strong tide
17 of individuals who wanted to keep me and for
18 whom it was necessary for the residency, for the
19 training of medical students, for the
20 performance of complex gynecologic ultrasound,
21 for the performance of complex GYN surgery, et
22 cetera, and she had the option of voting in
23 favor of that and did not, and I do believe that

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1 she understood the consequences of not keeping
2 me.

3 Q You mean the consequences that you just
4 testified to? The ability to reporting
5 relationships with SART and UVM, having
6 affiliations with UVM?

7 A Yes, and all the other things I just stated.

8 Q Anything else regarding Dr. DeMars that you
9 believe would demonstrate that she retaliated
10 against you?

11 A She stopped listening to my concerns.

12 Q When?

13 A Right before the closure.

14 Q You mean after the announcement in May before
15 the actual closure?

16 A Before the actual closure. Well, actually
17 before the announcement.

18 Q Anything else?

19 A Not that I recall at this time.

20 Q Okay. What, if any, facts are you aware of that
21 Ms. Gunnell had anything to do with the closure
22 of the REI Division?

23 A She had conversations with me about the

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1 potential foreclosure.

2 Q When was that?

3 A Beginning in the fall of 2016?

4 Q Are you aware of any facts that she actually did
5 have any involvement in the actual decision to
6 close the REI Division?

7 A Yes.

8 Q What are you aware of?

9 A There are, there's an email from Ed Merrens that
10 says that she is quote, "the unsung hero,"
11 unquote, of this closure.

12 Q Do you know whether or not she had any voting
13 authority with respect to the REI Division
14 closure?

15 A I know she was involved in conversations with
16 Dan Herrick. I don't know if she had, quote,
17 "voting," unquote, decision making.

18 Q With respect to the REI Division closure.

19 A Correct.

20 Q What, if any, facts are you aware of that Ms.
21 Gunnell in any way retaliated against you for
22 raising concerns and complaints to her
23 attention?

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1 A She was at the Value Institute meetings
2 reasonably hostile to the group.

3 Q To the whole group?

4 A To the group as a whole. And when I brought
5 concerns to her on ultimate occasions about
6 David and Albert, my impression was that she was
7 irritated.

8 Q What's the basis for your impression that she
9 was irritated?

10 A Big sighs, little comments, turning her back and
11 walking away. Leslie also told me that she was
12 upset, Heather was upset about my supporting my
13 secretary in her negotiations with Human
14 Resources and Kelly Mousley.

15 Q What about her?

16 A What about her?

17 Q You just said "and Kelly Mousley."

18 A It was Human Resources, Kelly Mousley and my
19 secretary.

20 Q Okay. And what was the nature of that issue?

21 A The way I understand it from Donna Bedard, my
22 secretary, Heather and Kelly were making changes
23 to office organization that would result in the

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1 restructuring of the process of patient care and
2 that not all of the elements had been addressed
3 that were critical. And she raised the issue.

4 Q Who is she?

5 A Donna.

6 Q Okay.

7 A And it was seen as, in her view, antagonistic
8 rather than information for them to make changes
9 that would meet all of the needs, and their
10 evaluation of this extremely long-term employee
11 was resulting in a verbal warning and a threat
12 for a written warning about her responses to the
13 change.

14 Q Were you involved in this whole episode?

15 A From the perspective of Donna asked my opinion.

16 Q Okay. Any other facts that you believe support
17 in any way that Ms. Gunnell -- go ahead.

18 A I went to Heather to tell her that there was
19 some concerns and I was concerned about Kelly's
20 approach to Donna and the fact that there were
21 potentially unsubstantiated claims against Donna
22 and that I was supporting Donna and encouraging
23 her to move forward with her negotiations with

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1 Human Resources.

2 Q What happened as a result?

3 A Donna sat with Human Resources and negotiated
4 with Kelly. I don't know the outcome of that.
5 I do know Donna is now, where she was only 18
6 months or so, two years from retirement, and at
7 risk for getting a written warning after nothing
8 but positive evaluations for many years, has
9 moved to vascular surgery and has gotten two
10 promotions and two raises in a different working
11 environment.

12 Q Did that happen as a result of those
13 negotiations?

14 A No. It was separate. She sought out that job.

15 Q Okay. I'm assuming HR had to support that move
16 at some point, right?

17 A I would assume so. Yes.

18 Q Anything else that you believe supports your
19 belief that Ms. Gunnell had anything to do,
20 engaged in any form of retaliatory behavior
21 towards you?

22 A Yes. I brought up the concern about the doors
23 being locked to the clinic in a relatively

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1 isolated area of the clinic and Kelly Mousley
2 having shut the phones off at that desk where
3 nurses were needing to recover patients from
4 general anesthesia.

5 Q Okay. What happened as a result?

6 A I went to Leslie with it, and she just waved her
7 hand at me and walked away, and I had brought up
8 the concerns based on national standards for the
9 American Academy of Anesthesiology that there
10 needs to be appropriate staffing for recovery in
11 an outpatient setting for anesthesia and
12 appropriate individuals, and Heather had
13 suggested that we get someone from The Pink
14 Smock downstairs which is a volunteer layperson
15 to come sit at the desk.

16 Q Okay. How is that connected in any way to your
17 claim of retaliation?

18 A Again, they saw that, when I spoke with Leslie
19 it was seen as another series of complaints
20 without any move forward to make changes.

21 Q When was that?

22 A Right before the announcement of the closure.

23 Q What's the basis for your belief that Dr. DeMars

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1 stepped down as OBGYN Chair as a result of some
2 connection to the REI Division closure?

3 A A conversation I had with Elizabeth Todd after
4 she spoke with Leslie once it was announced that
5 Leslie was stepping down.

6 Q Okay. What did Beth Todd tell you?

7 A That Leslie, Leslie said she was able to
8 negotiate some things, but that at least in part
9 some of the heated conversation with Dr. Merrens
10 was around the restructuring of REI.

11 Q You mentioned before that there was discussion
12 that you had with Leslie DeMars in the spring of
13 2017 about a pause with the REI Division?

14 A Yes.

15 Q What was your understanding of what that pause
16 would constitute?

17 A A brief pause of IVF procedures, but that we
18 would continue to do new patient evaluations and
19 offer non-IVF-related treatment and that DH was
20 offering to not charge patients who had frozen
21 embryos at the organization for a year of
22 storage fees because those would be the patients
23 in the cycles that we would most readily open

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1 back up with.

2 Q Was it your understanding that the pause of IVF
3 would be for a year as a result of offering a
4 year of --

5 A No.

6 Q How long did you understand the pause would last
7 for?

8 A Months.

9 Q Did you ever see anything in writing about how
10 long that pause would last for?

11 A No.

12 Q Did you understand why the REI division needed
13 to do a pause?

14 A My understanding was based on my conversations
15 with her.

16 Q Right. What was your understanding of why a
17 pause was necessary with respect to IVF at that
18 point?

19 A I was answering you.

20 Q Why? Yes. Go ahead.

21 A My understanding was that we would pause, allow
22 Dan Grow to come in, the transition of David and
23 Albert out, Judy to come in as patient volume

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1 allowed and we would retrain nurses.

2 Q Did you have an understanding of how long that
3 would take to do those four things?

4 A Months. We had a conversation about months.

5 Q Did you ever have any discussion directly with
6 Leslie DeMars about her stepping down as chair
7 of OBGYN?

8 A No.

9 Q Did you have any communication with Leslie
10 DeMars after the closure of the REI Division?

11 A Yes.

12 Q When?

13 A I had a discussion -- do you mean the day that
14 it was announced or the actual closure?

15 Q No. After the actual closure on June 3rd.

16 A Yes. I had left her a message on her phone
17 requesting a conversation with her. She called
18 back, left a message on my answering machine
19 saying yes, of course, she'd speak with me. And
20 then I called her once or twice after that and
21 left a message on her cell phone saying please
22 reach out to me. And then I spoke with her on
23 Sunday.

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1 Q What Sunday?

2 A This recent Sunday.

3 Q What did you speak to her about?

4 A Our children.

5 Q Anything else?

6 A No. No. That's all related to our children.

7 Q Did you have any discussion with her about this
8 case?

9 A No.

10 Q How did it come to pass that you actually spoke
11 this past Sunday?

12 A Joan Barthold's retirement party.

13 Q So you saw each other in person?

14 A Yes.

15 Q Did you have a discussion about anything else
16 relating to your case?

17 A Not real relating to the case, no. We talked
18 about our children. She showed me pictures of
19 her son and talked to me about him. Both of her
20 sons actually, but her one son who was an IVF
21 baby.

22 Q Do you have any reason to doubt Leslie DeMars'
23 honesty or trustworthiness?

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1 A Yes. Based on that email.

2 Q Other than that email, anything else?

3 A I think that email speaks large volumes.

4 Q Anything else?

5 A No.

6 Q Do you remember who that email was to? Was it
7 to Ed Merrens?

8 A I think it was Ed Merrens and Dan Herrick and
9 I'm not sure who else. I think it was the two
10 of them, but I don't recall.

11 Q And that was in and around the time frame after
12 the closure had been announced?

13 A Yes.

14 Q Okay. Just got a few minutes left.

15 Let me ask you about your current
16 employment arrangement. Well, let me ask you
17 this. If you had remained, one of the
18 alternatives in that May 2017 letter you wrote
19 to Aimee Giglio was an alternative position if
20 you remained at Dartmouth-Hitchcock, correct?

21 A Correct.

22 Q And did you understand that if you remained at
23 Dartmouth-Hitchcock, that that would be in a

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1 reduced role?

2 A No.

3 Q You thought it would be in the same role that
4 you had before?

5 A How would you define a reduction?

6 Q Well, would you be earning the same salary?

7 A Yes.

8 Q You believe you would be?

9 A Yes.

10 Q And despite the fact that the REI Division would
11 not be operating, correct?

12 A Despite the fact that there was conversations
13 with Dr. Conroy and Dr. Brumstead about
14 potentially having a joint program, and I'd had
15 that conversation with Leslie prior to the
16 closure because she said there was going to be
17 lots of opportunity to be working with you
18 again. So I would have had that conversation,
19 submitted a letter, she and I had conversations
20 about a joint venture with UVM, and then Barry
21 Smith raised it after I sent that letter in
22 with, on his own with Administration.

23 (Exhibit 14 marked for identification)

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1 Q This is Exhibit 14. You can have it. I'm
2 showing you a document which is your response to
3 Mary Hitchcock Memorial Hospital's First Set of
4 Interrogatories, and I want to turn your
5 attention to page 3, at the bottom of page 3,
6 okay? And I want to just understand UVM,
7 University of Vermont Medical Center, you
8 started working there June 4th, 2017?

9 A Correct.

10 Q And was that in a full-time capacity or per
11 diem?

12 A Per diem.

13 Q Okay. And are you currently employed by
14 University of Vermont Medical Center?

15 A Yes.

16 Q And other than an increase in your per diem rate
17 from 150 to 175, has anything changed in your
18 employment status with UVM?

19 A Yes.

20 Q Okay. Tell me about that.

21 A In May of 2018 I became employed faculty with an
22 appointment to the Medical School and a clinical
23 appointment to the University of Vermont Medical

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1 Center.

2 Q Okay. Did you receive anything in writing as a
3 result of that?

4 A Yes.

5 Q Okay. We haven't seen anything in that regard.
6 I'm not aware of any documents related to her
7 current employment.

8 With respect to your current employment,
9 well, that was as of May 2018?

10 A Correct.

11 Q Did you receive a salary in that capacity?

12 A I began receiving salary in May of 2018.

13 Q What was it?

14 A It's broken down based on partial employment to
15 the Medical School, a variable, and employment
16 by UVM Medical Center, and it's approximately
17 \$240,000 a year with benefits.

18 Q Do you know why your expert designated in this
19 case said that one of his assumptions is that
20 you'd receive a salary of 260,000?

21 A Oh, I had, I got a \$20,000 raise but that, part
22 of that is variable so it's not guaranteed.

23 Q When did you receive that?

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1 A My first review which would have been end of the
2 first summer? But we didn't get our variable
3 this first part of this year based on
4 performance of UVM.

5 Q So what is your current salary?

6 A I'd have to look that up.

7 Q Do you have any idea?

8 A It's approximately that, 260.

9 Q And do you receive any additional compensation
10 in the form of grants or other pieces of
11 compensation?

12 A I do not have any grants currently. I have
13 received a total of \$3000 to be an expert
14 witness on a gynecologic case. And I have not
15 yet been paid but am an expert for ultrasound
16 interpretation for a tubal, a new tubal
17 occlusion material.

18 Q And is that a set fee or is it?

19 A So much per hour. 350 an hour.

20 Q And how much work do you expect that to be?

21 A It's not known because it's a new product and
22 it's a new process so they're not sure how many
23 research sites they're going to have yet.

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1 Q Is there anything in writing regarding that
2 arrangement?

3 A Yes.

4 Q Okay. So there's a document that relates that?

5 A Yes.

6 Q And are there documents that relate to your
7 terms of your employment with UVM, UVM Medical
8 Group for 2019?

9 A Not -- the original from 2018 there is.

10 Q To the extent you have a raise, was there some
11 document to that?

12 A I haven't seen any emails. It was verbally
13 given to me by the Chair.

14 Q Okay. And do you receive any other forms of
15 compensation at this point in 2018 or 2019 other
16 than -- let's just say 2019 for now.

17 A Not that I recall right now.

18 Q And in 2018, did you, and 2017, did you receive
19 long-term disability benefits up until the
20 summer of 2018 under Dartmouth-Hitchcock's
21 long-term disability policy?

22 A I'd have to go back and look at the dates
23 exactly, but yes, I did, while I was on per diem

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1 at UVM.

2 Q Did your status as being on per diem impact the
3 receipt or level of LTD benefits?

4 A Yes.

5 Q When you started receiving a full-time salary in
6 May 2018, approximately 240,000, is that the
7 point at which your long-term disability
8 benefits stopped?

9 A I'd have to go back and look at the specific
10 date.

11 Q But it was some time in I think you said July or
12 August of 2018 when your long-term disability
13 finally ended?

14 A I believe so.

15 Q In your expert's report there was an assumption
16 that June 2021 or thereafter that you would quit
17 your employment with UVM, and I'm wondering what
18 the basis for that assumption is if you know.

19 A It's not tenable to live away from my husband or
20 my children.

21 Q Where do you currently live?

22 A We currently have a house in Norwich, Vermont.
23 We own a condominium in Burlington.

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1 Q How long have you owned the condo in Burlington?

2 A Just over a year.

3 Q What's the distance between Norwich, Vermont,
4 and Burlington, Vermont?

5 A It's about 85 to 90 miles.

6 Q And are you working every single day at UVM?

7 A I'm working four days a week in the week that
8 I'm not on call, and I work 12 to 13 days in a
9 row on the week that I'm on call.

10 Q How old are your children?

11 A 26, 22, and 21.

12 Q Do any of them reside at home?

13 A I have a college student, and he's home during
14 the course of the summer months. My others are
15 home over holidays and vacations.

16 Q Where do they live otherwise? The two oldest?

17 A My daughter lives in Boulder, Colorado, and my
18 middle child currently lives in Burlington.

19 Q Where is your youngest children at school?

20 A Colorado School of Mines.

21 Q Prior to a year ago, did you have any more than
22 one residence at any point?

23 A Summers.

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1 Q Summer residence?

2 A I'm sorry? Are you --

3 Q I'm just asking whether you own more than one
4 property at the same time?

5 A Oh, yes. We own a lake property.

6 Q Where is that?

7 A Fairlee, Vermont. It's about a 20-minute drive
8 north of Norwich.

9 Q And with respect to your employment by UVM, you
10 receive, you're considered a full-time employee,
11 correct?

12 A Yes. .75.

13 Q So not completely full-time.

14 A It's considered full-time.

15 Q Okay. But does that assume, I mean, 1.00 would
16 be full-time, am I correct?

17 A Correct.

18 Q Okay. What does .75 contemplate?

19 A The schedule I gave you.

20 Q Flex time?

21 A No. It's, they're at a day off.

22 Q What's that?

23 A It's a .25 less pay for a day a week. It's

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1 supposed to equal out to about a day a week.

2 Q Did you seek that out?

3 A No, it was what they could offer me.

4 Q Okay. So is the \$260,000 salary that you
5 receive, is that the full salary you receive?

6 A Yes.

7 Q Okay. I have nothing further. Thank you.

8 A Okay. Thank you.

9 (Deposition ended at 1:57 p.m.)

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I have carefully read the foregoing deposition, and the answers made by me are true.

MISTY BLANCHETTE PORTER, M.D.

STATE OF _____
_____, SS.

At _____ on the
_____ day of _____ A.D.
2019, personally appeared the above-named MISTY
BLANCHETTE PORTER, M.D., and made oath that the
foregoing answers subscribed by her are true.

Before me,

Notary Public

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C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages, numbered 5 through 107, are a true and accurate transcription of my stenographic notes of the deposition of MISTY BLANCHETTE PORTER, M.D., who was first duly sworn by me on July 18, 2019, for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at North Sutton, New Hampshire, this 24th day of July, 2019.


Cynthia Foster, LCR

